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c. Residency determinations

Each school district in Connecticut is responsible for providing school accommodations to resident children. Thus, eligibility for free school privileges is typically determined on the basis of the residence of the student, *i.e.* the factual question of where the student actually resides. Over a hundred years ago, the Connecticut Supreme Court ruled that "residence" for school purposes is not to be interpreted technically, but rather in the "ordinary and popular meaning of the word." *Yale v. West Middle School*, 59 Conn. 489, 491 (1890). *See also New Haven v. Torrington*, 132 Conn. 194 (1945). If the child is actually present within the district, he or she has the right to be educated there.

By law, the burden of proof in residency disputes technically falls on the family; the statute provides that the "party denied schooling shall have the burden of proving residency by a preponderance of the evidence." Conn. Gen. Stat. § 10-186(b)(1). In considering whether a child is entitled to attend school in a specific town, we must start with the premise that there is a public policy in favor of education. A bona fide residence in the school district is required, of course, but each child has the right to attend school somewhere. Accordingly, residence for school purposes must be interpreted broadly to assure that all children may indeed attend school. Practically speaking, to establish that a student is not entitled to school privileges in a particular district, district personnel generally must be able to point to another district in which the student should be attending school.

In this complicated age, questions of residence are not always simple, and students can have significant connections to more than one town. Each of the typical family situations is addressed below. Please note that school officials should make a residency determination before permitting a parent or guardian to enroll a student. Once a student is enrolled, the district must permit the student to remain in attendance until hearings over eligibility for school privileges are complete. Conn. Gen. Stat. § 10-186(b)(2). School officials may recoup the cost of tuition if a state hearing officer finds that the student was not entitled to school privileges, but such after-the-fact relief does not directly benefit the school board because the money goes to the municipality (if the parents ever pay up at all).

1. Student living with parents

If a student is living with parents or guardians, the school district must ascertain whether they are living in the district. The parents should be asked to give the address of their house or apartment, and to provide evidence of residence, such as a driver's license for that address, utility bills made out to that family at that address or other information to establish that they are actually living at the house or apartment in question. District officials can ask for a copy of the lease if the family is renting.

Key to this determination is where are the children actually residing. The Residency Guidelines published by the State Department of Education in its School Accommodations Workshop Package at 32 (2008) provide helpful guidance as to factors that may be considered in determining residency. Some parents claim that their children are eligible for school accommodations based on the fact that they own property in the town. Mere ownership of property in a school district, however, is irrelevant, and the parents must show actual residence in the school district. *Mangiafico v. State Board of Education*, 138 Conn. App. 677 (2012) (ownership of blighted property in Farmington while residing in New Britain did not qualify students for school accommodations in Farmington, despite claim that family planned to move back to Farmington after home there was repaired).

2. Student living with one parent (when parents are divorced)

Practically speaking, a student will be eligible to attend school in the school district if either parent resides there, regardless of whether the parent residing in the district has custody. Legal custody is not required for a student to be eligible for school accommodations. Rather, the question is simply whether the child is actually residing in the district. However, if a student claims to be living with a parent in a particular school district, it may be difficult for the district to show otherwise. Spending some nights with the other parent will not change the residency of the student, and hearing officers and the courts will be sympathetic to the wishes of divorced parents to have their children spend substantial time with each parent. The facts of the case govern, however, and the actual residence of the student, not the wishes of the parents, is the dispositive factor. *See West Hartford Board of Education v. State Board of Education*, 2002 Conn. Super. LEXIS 2097 (Conn. Super. 2002).

3. Student living in homes on the town boundary

In rare cases, a student's residence rests on the boundary of two towns, and the question arises as to where the student is entitled to attend school.

There have been both litigation and statutory changes concerning this matter. In *Baerst v. State Board of Education*, 34 Conn. App. 567, *cert. denied*, 230 Conn. 915 (1994), the Appellate Court applied a "constellation of interests" test to find that a student whose family's property was in both Norwalk and New Canaan (though the house was entirely within the town of Norwalk) was eligible to attend the New Canaan Public Schools because the focus of his life was New Canaan, not Norwalk. This ruling caused consternation because it made it difficult to predict with certainty where a student would be entitled to attend school.

The General Assembly has clarified the situation. After taking several different approaches, it established the current rule in 1997. The town of residence is where the dwelling is located, *i.e.* the house or apartment in which the family resides, not the plot of land on which the dwelling stands. *See McGarry v. State Board of Education*, 2001 WL 399925 (Conn. Super. 2001) (student residing on parcel in Waterford and Montville must attend Montville schools because the dwelling is solely in Montville). If a town line intersects the dwelling, however, the student is entitled to attend school in either school district. Conn. Gen. Stat. § 10-186(a).

4. Undocumented foreign nationals

Sometimes questions arise concerning a student who is indisputably residing within the district, but who is not legally a resident of this country. These situations can put districts between a rock and a hard place, but some general comments may be helpful. The United States Supreme Court has ruled that a child's legal status should not affect his or her right to attend school. The Court struck down a Texas law that permitted school districts to deny educational services to children of undocumented foreign nationals. *Plyler v. Doe*, 457 U.S. 202 (1982). The bottom line is that school districts will generally be responsible for children who are actually living in their district, regardless of their immigration status.

Federal law limits the rights of a student to attend public school districts on an F-1 visa. F-1 nonimmigrant student status is not available to a foreign national who seeks to attend a public elementary school. The law further provides that entry into this country to attend a public secondary school is prohibited unless the aggregate period of F-1 status does not exceed one year (cumulative total of twelve months) and the foreign national reimburses the school for the unsubsidized per capita costs of providing the education. 8 U.S.C. § 1184(m)(1). The J-1 visa remains available, however, for foreign nationals who attend school in the United States pursuant to approved foreign exchange programs.

These new provisions have caused some confusion. If the federal law now states that students whose legal residence is in another country may not obtain an F-1 visa to attend school, should such a child be permitted to attend school? Does such attendance violate federal law? The answers are yes and no. Given the *Plyler v. Doe* case cited above, and the strong public policy in favor of education, visa status and school attendance must be kept separate. If the student appears not to be a permanent resident, as when s/he is in this country on a tourist visa, the district may deny school accommodations. The district must notify the family, however, of their right to a hearing before the board of education over the denial. Conn. Gen. Stat. § 10-186(a). The burden will then be on the family and/or student to show that s/he is a permanent resident, notwithstanding his or her immigration status. If the family and/or student establishes that s/he is actually residing in the school district, the student will be entitled to school privileges. As the Connecticut Supreme Court stated in 1890, if the child is "actually present," *i.e.* is residing in the district, he or she is entitled to attend school. *Yale v. West Middle School*, 59 Conn. 489, 491 (1890). Providing education to such a child is not a violation of federal law. To be sure, the student may be residing in this country illegally, and he or she may be subject to deportation. As long as the child actually resides within the school district, however, the child is entitled to attend school.

The Office for Civil Rights of the United States Department of Education has weighed in on this issue. In a "Dear Colleague Letter Dated May 6, 2011," OCR cautioned that federal law prohibits discrimination against students on the basis of race, color or national origin. Citing *Plyler*, OCR warns that undocumented or non-citizen status is irrelevant to that student's entitlement to education. On the other hand, OCR acknowledges that school districts have the right to provide educational services only to students who actually reside in that school district. Accordingly, school officials may ask for proof of residence, such as a lease or utility bills. Similarly, a student's age may be relevant for grade placement or basic entitlement to educational services, and school officials may request a birth certificate. However, questions about immigration or citizenship status or a refusal to accept a foreign birth certificate may be evidence of discrimination on the basis of race, color or national origin, and such actions should be avoided. *See Hispanic Interest Coalition v. Governor of Alabama*, 691 F.3d 1236 (11th Cir. 2012) (Alabama law requiring school officials to collect and verify information concerning enrolling students citizenship and immigration status violates Equal Protection rights of students).

5. Student living with other family members or friends

Under limited circumstances, students may establish residence in a district and attend school there even though neither parent lives in the district. Students often wish to move in with other family members or friends to attend school. The challenge is to determine when the student has actually established a residence apart from his or her parents.

The legislature has attempted in two ways to assure that only bona fide resident children may attend school in a district. First, the statutes provide that the family claiming eligibility for school privileges must establish residency by a preponderance of the evidence. Conn. Gen. Stat. § 10-186(b)(1). Second, the statutes set out specific requirements to establish "residency" when students do not live with their parents or guardians. Conn. Gen. Stat. § 10-253(d) provides that students may attend school in a district even though their parents or guardians do not live there under the following conditions. It must be the intention of the parents or the child and of the host family that the residence in the district be:

- permanent,
- provided without pay, and
- not for the sole purpose of obtaining school accommodations.

As a threshold matter, we note that a student may be eligible for school privileges in a district even over the specific protest of one or even both parents. Since there is a strong public policy in favor of assuring that children receive education, the General Assembly has provided that it is sufficient that it is the intent of the child and of the host family that the child will reside in a school district. When students run away from home and live with friends, for example, they may in fact be "residing" with their friends in that district. If so, they are entitled to school privileges where they then live.

Also, Conn. Gen. Stat. § 10-253(d) provides that school officials may request that a parent provide documentation of the child's residency. The statute further provides, however, that the district must first provide the family a written statement specifying the basis on which the district has reason to believe that the child is not entitled to school accommodations. This requirement appears not to apply, however, in the case of verifying residence upon initial enrollment. At that point, the district would not have made a determination concerning eligibility for school privileges, and could certainly not provide a written statement concerning grounds for ineligibility.

a. "Permanent"

"Permanent" residence is difficult to define. The State Department of Education has provided guidelines to assist school districts in making residency determinations. These Guidelines are set out in the School Accommodations Workshop Package, available at the State Department of Education website. These Guidelines define a "permanent resident" as "one who resides in a district and who has a present intention to remain with the district." The notion of present intention to remain is of little help, of course; a student whose family is planning to move to another town, for example, remains entitled to school privileges until the day the family actually moves. All the facts and circumstances of the student's residence, therefore, must be considered in determining whether a claimed residence is permanent. If a student resides with friends during the school year and lives with parents during vacation and summer periods, for example, those facts would support a finding that the residence with friends within the school district is not permanent.

The State Guidelines set out factors that school districts may consider. The Guidelines recognize that residency determinations are complex, and the list of factors is not exhaustive: "There are a number of factors enumerated in court cases that boards may consider relevant to a determination of residency. These and other factors may be used as evidence of permanency and residency or the lack thereof. These may include, among others:

a) Where the majority of the student's clothing and personal possessions are located;
b) Address listed on the student's driver's license;
c) Town of issue of library card;
d) Where the student attends church;
e) Place of club affiliations, *e.g.* cub scouts, boy scouts;
f) Residence of child's immediate family;
g) Where the student spends substantial time when school is not in session;
h) Age and emancipation status of the child."

The Guidelines address the issue of custody as follows:

> As evidence of permanent residency, a district may request, but not require, as an indicator, that the person with whom the child resides has primary and direct responsibility over such child's daily and general affairs (e.g. ability to consent to school trips and medical treatment, attend parent-teacher conferences, receive report cards, etc.).

Legal custody in the host family is not required, however, because the question is not who has custody, but rather simply where the child resides.

b. "Provided without pay"

The next factor listed in the statute is "provided without pay." This requirement has been in the statute for many years, and presumably it was originally intended to avoid the "rooming house" situation in which a person would set up shop to host children so that they could attend school in a particular district. The State Guidelines address this factor as follows:

> Pay shall include any monetary remuneration from a parent or legal guardian for the support of a child either to the relative or non-relative or to the child. It shall not include gifts to the child for purposes other than support.

In addition, the Guidelines clarify the issue of "pay." They state that "pay" does not include maintaining the child's health insurance, taking the child as a deduction for income tax purposes, or making support payments pursuant to a court order.

c. "Not for the sole purpose of obtaining school accommodations"

The last factor is "not for the sole purpose of obtaining school accommodations." Application of this factor will typically depend upon the specific facts of the case. If a student says that he is going to live with his friend so that he can complete his education in a school district, for example, he has just provided evidence that he is not entitled to attend school in that district. Sophisticated parents, however, can come up with some explanation other than completing school for the separate residence of their child (*e.g.*, "we are not getting along" or "she was living with my parents to help them remember to take their medication").

In an effort to ensure that these statutory requirements are met, many districts require that parents and host families execute affidavits attesting to the fact that the residence is permanent, provided without pay and not for the sole purpose of education. These forms can also warn parents and others that they may be liable for tuition charges if it is later determined that the student attended school illegally.

6. State agency placements

Students who are placed in a district by state agencies are entitled to free school privileges in that district. However, if the placement is made in a private residential facility, the district in which the child would otherwise be attending school is financially responsible for the student's education. Conn. Gen. Stat. § 10-253(a), (b), (d). Such financial responsibility is limited to the lesser of the cost of education or the district's per pupil expenditure for the prior fiscal year. However, if such a district cannot be identified, the district where the student is placed remains responsible. When students requiring special education services are placed in a residence on state-owned property, special provisions apply to require the State to reimburse the local or regional district for one hundred percent of the cost. Conn. Gen. Stat. § 10-76d(e).

As described below, Conn. Gen. Stat. § 10-253(e) sets forth the applicable rules regarding responsibility for educational services when DCF places a child in a temporary shelter. In addition, legislation adopted in 2010 now gives DCF new rights concerning the school placement of children removed from their homes. Specifically, Conn. Gen. Stat. § 17a-16a provides that DCF may consider whether the best interests of a child in its custody require that the student remain in attendance in his/her "school of origin," the school that the student is attending when a student is removed from his/her home or when a change in placement otherwise occurs. Such continuity of schooling is a concept that derives from the McKinney-Vento Act, described in subsection 7, immediately following. There is a presumption in favor of continued attendance in the school of origin, and DCF is empowered to consider the child's best interests and either maintain the child in the school of origin or move the child to the school district in which the student resides as a result of the placement.

When DCF determines that the child should remain in the school of origin and such attendance requires transportation from the child's placement, DCF and the school of origin are required to cooperate on a transportation plan, and DCF is financially responsible for any additional costs of transportation to the school of origin. Conversely, when DCF determines that the child's best interests are served by enrolling in the new school district, the school of origin must transfer all essential records (including the child's IEP and behavior plan, if any) to the receiving school within one business day of receiving notification of the transfer. Other educational records must then be transferred in accordance with Conn. Gen. Stat. § 10-220h (ten calendar days).

7. Homeless children

When a student has no permanent residence in a school district, he/she remains entitled to educational services. In 1987, the General Assembly addressed this situation, and the No Child Left Behind Act sets forth new rules. Conn. Gen. Stat. § 10-253(e) provides that students who reside in temporary shelters are entitled to free school privileges from the school district in which the shelter is located or from the school district where they would otherwise reside if not for the need for temporary shelter. The statute provides that the district in which the temporary shelter is located shall notify the district where the student would otherwise be attending school. The district may either continue to provide educational services, including transportation between the temporary shelter and school in the "home" district, or it may pay tuition to the district in which the temporary shelter is located.

When the student is placed out of district in order to receive special education services, the district where the student would otherwise attend school remains responsible for the placement until a new residence is established. However, where it is not possible to identify the district where the student would otherwise be attending school, the district in which the temporary shelter is located must provide school accommodations to the student.

Conn. Gen. Stat. § 10-253(e) also states that when DCF places a child requiring special education in a temporary shelter, the district in which the child resided immediately prior to the placement is responsible for the costs of special education instruction. This responsibility, however, is limited to a period of one year (or earlier if the child is returned to his or her parents or is committed to the state), after which time DCF is financially responsible.

Title X, Section 1032 of the No Child Left Behind Act (known as the McKinney-Vento Homeless Education Assistance Improvements Act of 2001, 42 U.S.C. § 11431 *et seq*.) amended the federal law concerning homeless children. *See* Non-Regulatory Guidance, Education for Homeless Children and Youth Program (July 2004). Conn. Gen. Stat. § 10-253(f) incorporates these federal requirements by reference. Unfortunately, at this point it is not clear whether and how the state and federal laws interrelate, because the reference in the federal law to "emergency or transitional shelters" differs from the definition of "temporary shelters" under state law. However, as a general premise, compliance with the McKinney-Vento Act should also be compliance with similar state law responsibilities.

The McKinney-Vento Homeless Education Assistance Improvements Act defines "homelessness" broadly to mean "individuals who lack a fixed, regular, and adequate nighttime residence," including:

- children who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;
- children who are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
- children who are living in emergency or transitional shelters, or who are abandoned in hospitals, or are awaiting foster care placement;
- children who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
- children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- migratory children who qualify as homeless because they are living in circumstances described above.

This law obligates school districts to assure that students enrolled in their schools who become homeless during a school year continue to receive educational services for that year. It further provides that students who become homeless between school years must continue to receive educational services for the following school year. In both cases, the school district responsible for assuring continued educational services is the district in which the student was last enrolled before becoming homeless (the district of origin). This obligation continues throughout the period of homelessness.

Moreover, such children may now continue in enrollment in the school of origin at least for the rest of the school year, even if they establish a new residence. The school district of origin and the new school district must confer on how best to share costs, but if they cannot, the law specifies that they must split the costs equally. Obviously, the obligation to assure that such children get to school each day can be a logistical nightmare. To meet these obligations, school districts are now required to designate an appropriate staff person, who may also be a coordinator for other federal programs, as the district liaison for homeless children and youths.

Under McKinney-Vento, the district of origin (where the child was enrolled when s/he last had a permanent residence) is obligated to maintain the child in the school of origin "to the extent feasible," unless the parent or guardian objects. The district may continue to provide educational services in the school of origin, *i.e.* the school that the student attended when last permanently housed or the school of last enrollment. The responsible district

may provide for the child to attend school in the school that is attended by other students living in the same attendance area where the homeless child lives, but if the parent or guardian insists, transportation must be provided to the school of origin if that school is within the school district.

The McKinney-Vento Act further requires that homeless children be provided with educational services that are comparable to those provided to the other students enrolled in the same school, including transportation services, compensatory educational programs and the like. The 2001 Amendments imposed significant new obligations. Homeless children now have the right to continue in enrollment at attend their school of origin, as described above. The premise is that the school of origin is one of the few sources of stability in the child's life. In addition, homeless children now have the right to attend school even though immunizations and other conditions are not met and even though school records are not available. A child who claims that he or she is homeless and has been denied school accommodations has the same right to seek a hearing as other children, as outlined below. Significantly, however, if a child is homeless, under the McKinney-Vento Act, he or she is entitled to "stay-put" and may attend school where enrollment is sought pending a decision through the hearing process.

d. Denial of school accommodations and hearing procedures

Given that the "residence" of a student is not defining, disputes over eligibility for free school privileges can and do arise. If district personnel conclude that a student seeking admission or a student already attending district schools is not eligible for school accommodations, they must notify the family of that determination, and the basis for it. Typically, such written notification also informs the family that the child should be withdrawn from school by a specified date. Also, if the determination is made on the basis that the student resides in another school district, that other school district must be notified of the denial of school accommodations to the student. Conn. Gen. Stat. § 10-186(a).

After a school district notifies a family of denial of school privileges, it may not simply exclude the student from school. The courts have held that such action without at least offering a prior hearing is a denial of due process. Rather, whenever a school district provides notification that a child is not eligible for school accommodations, it must inform the parents or guardians of their right to request a hearing under Conn. Gen. Stat. § 10-186(b) if they dispute the determination. The statute further provides that the parent, guardian or student may in writing request a hearing from the board of education on the denial of accommodations. Interestingly, the statute does not

contain a time limitation for the filing of such a written request. It is advisable, therefore, for a school district to include in its original notification of ineligibility a date by which the parents should either remove the child from school or request a hearing.

Within ten days after receipt of the request, the local or regional board of education must hold a hearing. The statutes provide that the board may (1) itself conduct the hearing, (2) designate a subcommittee of the board composed of three members to conduct the hearing, or (3) establish a local impartial hearing board of one or more members who are not members of the board of education to conduct the hearing. At such hearings, the burden is on the student to establish residency by a preponderance of evidence. However, if a school district claims that a student is ineligible for a reason other than residency, it has the burden of proving such ineligibility. The school board must maintain a record of the hearing and make its decision on the question of eligibility for school privileges within ten days after the close of the hearing. Conn. Gen. Stat. § 10-186(b)(2).

When a student is already enrolled in school, he or she may remain in school during the hearing process and any subsequent appeals. However, the district has the right to seek payment of tuition for such period if the student is ultimately found ineligible for school privileges. Conn. Gen. Stat. § 10-186(b)(2) and (4). If the child has not yet been enrolled, however, school officials are not required to enroll the child during the hearing process (except as may be required under the McKinney-Vento Act, discussed above).

A decision to deny school accommodations to the student may be appealed to the State Board of Education. Conn. Gen. Stat. § 10-186(b)(2). Such an appeal must be filed within twenty days of the mailing of the board of education decision, or the appeal will be dismissed. Hearing officers appointed by the State have strictly enforced this time limitation. In addition, the parent may request and receive within thirty days a tape recording or a transcript of the hearing before the local or regional board of education. Conn. Gen. Stat. § 10-186(b)(2). However, since the party requesting the transcript must pay for it, it is more common for the parties simply to submit the tape recording of the board level hearing to the State Board of Education. *See* Conn. Gen. Stat. § 4-177(e).

The local or regional board must file the record of its hearing with the State Board of Education within ten days of receipt of an appeal. An impartial hearing officer of the State Board of Education will hold the hearing on the appeal in the local or regional school district, must maintain a record of the hearing, and has the right to join as a party to the hearing any school district that could be responsible for the student's education. In fact, the statute

expressly states that the hearing officer may not make a determination concerning the obligations of another school district unless that district is also a party to the hearing. Conn. Gen. Stat. § 10-186(b)(2). Therefore, whenever a school district contests eligibility for school accommodations and claims that another district is responsible for the child, it should make sure that the other district is made a party to the hearing.

The hearing officer must consider the record of the hearing before the local or regional school board. In cases of residency disputes, the hearing officer makes an independent determination, and s/he is not required to give deference to the decision of the board of education below. In all other cases (including denial of school accommodations for other reasons or denial of transportation services), the decision of the local or regional board of education is to be sustained unless the hearing officer finds that the decision was arbitrary, capricious, or unreasonable. Conn. Gen. Stat. § 10-186(b)(4). It is especially important in such cases, therefore, that the local or regional board of education make written findings. Such findings make clear the basis for the decision of the local or regional board of education, and the hearing officer is better able to determine whether the decision should stand.

The hearing officer is required to make a decision within forty-five days of the request for a hearing, but the hearing officer may request extensions from the Commissioner of Education. Extensions are normally granted. These time limits are not mandatory, but rather directory, *i.e.* they provide guidance to the hearing officer. *Blau v. State Board of Education*, 19 Conn. App. 428, *cert. denied*, 212 Conn. 816 (1989). If the hearing officer rules that the student was not entitled to free school privileges, the school district may then charge the family tuition for the period when the student attended school in the district without legal right. The statute even provides the formula for assessing such charges: "One one-hundred-eightieth of the town's net current local educational expenditure, as defined in section 10-261, per pupil multiplied by the number of days of school attendance of the child in the district while not entitled to school accommodations provided by that district." The statute further provides that the school district "may seek to recover the amount of the assessment through available civil remedies." Conn. Gen. Stat. § 10-186(b)(4). However, after a few highly-publicized cases involving some parents who were also prosecuted for larceny, the General Assembly amended the statutes effective October 2013 to provide that enrollment in school without legal right will no long be considered a crime. Conn. Gen. Stat. §53a-118.

If parents or school officials are dissatisfied with the decision of the hearing officer, they may appeal to Superior Court. Such an appeal must be filed within forty-five days of the mailing of the decision. Conn. Gen. Stat. §

10-187, Conn. Gen. Stat. § 4-183. As with other court appeals, any dispute may then be appealed further, to a final ruling by the Connecticut Supreme Court. Once the process is concluded, however, the school district may disenroll the student. *Dunbar v. Hamden Board of Education*, 267 F. Supp. 2d 178 (D. Conn. 2003).

e. Transportation

Under Connecticut law, "each local or regional board of education shall furnish, by transportation or otherwise, school accommodations" to resident children. Conn. Gen. Stat. § 10-186(a). Such transportation must also be provided to students enrolled in non-public, non-profit schools within the district. Conn. Gen. Stat. § 10-281. School boards must also provide transportation to students enrolled grades K through 12 in vocational-technical schools, agricultural science and technology education centers, and to charter schools located within the district. The key to the duty to provide transportation is that it must be a necessary part of school accommodations. If a student does not need transportation in order to have reasonable access to school accommodations, there is no duty to provide it.

School districts may suspend students from transportation services for up to ten days if their conduct while awaiting or receiving transportation to or from school endangers persons or property or is violative of a publicized policy of the board. Conn. Gen. Stat. § 10-233c. This right to suspend transportation services applies to students enrolled in private schools as well. Conn. Gen. Stat. § 10-281. School officials should be cautious, however, in any suspension of transportation services. Transportation is typically provided because the district has determined that the walking route to school presents a hazard due to distance or other danger. If such transportation is to be suspended, the district should ascertain through discussion with the parents how the student will otherwise be getting to school. The district should not create a situation where the student is exposed to hazards because he or she is expected to get to school on his or her own without any safe way to do so. If the parents will not agree to provide transportation, it may be more appropriate to suspend the student from school altogether.

1. Transportation to public schools

Whether transportation services are necessary to provide reasonable access to school depends, of course, on the particular facts. The statute does not prescribe the situations in which transportation must be provided to students. Most districts have specific policies as to when students will be entitled to transportation based on both the student's grade level and the distance from the student's designated school. For example, a district might

set one-half mile as the requisite distance for grades kindergarten through 3, one mile for grades 4 through 8, and two miles for grades 9 through 12. However, when walking exposes the students to hazards or other dangers, such as high speed streets, unguarded intersections on busy streets, or unfenced waterways, transportation must be provided regardless of distance. The State Department of Education has developed guidelines concerning the provision of transportation that, although not binding, are a helpful starting point for boards of education in developing their own policies. These Guidelines are set out in the School Accommodations Workshop Package, available at the website of the State Department of Education.

2. Transportation to state technical high schools, agricultural science and technology education centers, charter schools, and interdistrict magnet schools

Students may elect to attend state technical high schools or agricultural science and technology education programs. S*ee* Chapter One, Section F(8). In such cases, their district of residence must provide transportation to the school (for agricultural science programs, the reasonable costs thereof). The statutes set forth special reimbursement percentages for the district providing such transportation, and limit the cost for agricultural science and technology programs to the foundation, as defined in Section 10-262f(9). Conn. Gen. Stat. § 10-97(e).

As described in Chapter One, Section F(13), students may also elect to attend charter schools. The school district in which the student resides must provide transportation to any charter school located within the school district. Conn. Gen. Stat. § 10-66ee(e). However, this obligation extends only to students attending grades K through 12. *Board of Education of the Town of Hamden v. State Board of Education*, 278 Conn. 326 (Conn. 2006). School districts may also elect to provide transportation to students attending charter schools outside of the district, and if they do so, they will be eligible for reimbursement for some of the costs of such transportation. Conn. Gen. Stat. § 10-66ee(e); Conn. Gen. Stat. § 10-266m.

Providing support for interdistrict magnet schools is one way in which the State is addressing its obligations under *Sheff v. O'Neill*, 238 Conn. 1 (1996). Students who elect to attend interdistrict magnet schools may also be entitled to transportation to such schools, which may be provided by the participating local or regional school district. If the school is located within the district, eligibility and reimbursement for such transportation is determined on the same basis as for other in-district transportation. If the interdistrict magnet school is located outside of the student's district of residence, the

district is not obligated to provide transportation, but it may do so. If it does, the school district transporting the student will receive reimbursement for the cost of such transportation in accordance with Conn. Gen. Stat. § 10-264i.

3. Transportation to private schools

School districts must provide "the same kind of transportation services" to resident children enrolled in "nonpublic nonprofit schools" that are located within the district. Conn. Gen. Stat. § 10-281. Accordingly, school districts typically apply the same policies regarding distance to school and the existence of hazards on the way to determine whether children enrolled in such private schools are entitled to transportation services.

The statute sets out certain limitations on the duty of a board of education to provide such transportation to students enrolled in private schools. First, a majority of the students must be residents of Connecticut. Second, the local or regional board of education may not be required to expend more than twice the local per pupil expenditure for public school transportation for the last completed school year. If the transportation costs exceed this limitation, the local or regional board of education may, at its option, either allocate its share of the transportation costs on a per pupil, per school basis, or may pay the provider directly until the limitation is reached, even if that is for less than the entire school year.

The Connecticut Supreme Court clarified the obligation to transport private school children within the district in 1998. The Stafford Board of Education declined to provide transportation services to such students on days on which the public schools were not in session. The Court ruled, however, that the Board of Education was obligated to provide transportation on days when the private school was in session. *Board of Education of the Town of Stafford v. State Board of Education*, 243 Conn. 772 (1998). The Court rejected the Board's argument that such transportation was not "the same kind of transportation" since the public schools were not in session on those days. The Court noted that "[r]easonable equality would limit the Town's transportation to no more than the 180 days mandated by law." In addition, the Court rejected the argument that requiring school districts to provide such transportation to sectarian schools would violate the Establishment Clause of the United States Constitution. *See Everson v. Board of Education*, 330 U.S. 1 (1947) and Chapter Two, Section A(1)(a).

In addition, school districts also have the discretion to provide transportation services to students who attend private schools outside the school district. Conn. Gen. Stat. § 10-280a. Because there is no state

reimbursement for such transportation, however, school districts seldom provide transportation for students enrolled in schools outside the district.

4. Review of transportation decisions

If parents feel that their child is being denied school accommodations because necessary transportation is not being provided, they have the right to seek review before the board of education. This right of appeal exists concerning transportation to vocational-technical, agricultural science and technology education programs and to private schools, as well as public schools, including interdistrict magnet schools and charter schools, within the district. Conn. Gen. Stat. § 10-97(d); Conn. Gen. Stat. § 10-281. Also, transportation disputes can arise with regard to "riders." When a school district provides transportation, it must also establish a bus stop to which the student must walk. If parents believe that the walking route to the bus stop is too far or otherwise subjects a student to hazard, they also have the right to seek review under Conn. Gen. Stat. § 10-186.

The same procedures that apply to school accommodations hearings also apply to review of transportation decisions. The decision by the board of education may be appealed to the state, and if so, the hearing officer must uphold the decision of the board of education unless s/he finds that the board's decision was "arbitrary, capricious or unreasonable." Conn. Gen. Stat. § 10-186(b)(4).

5. Regulation of student transportation

The duty to provide transportation is a basic element of providing free school privileges: Conn. Gen. Stat. § 10-186(a) provides that each school district "shall furnish, by transportation or otherwise, school accommodations . . . ." Moreover, school boards are authorized to enter into contracts for up to five years with bus contractors to provide such transportation services. Conn. Gen. Stat. § 10-220(a)(4). The statutes even address the issue of liability, in two ways. First, the defense of "governmental immunity," as discussed in Chapter One, Section G(1)(d)(2) is expressly not available to school districts that are sued for injuries suffered while receiving transportation to and from school. Conn. Gen. Stat. § 52-557. *See also* Conn. Gen. Stat. § 52-557c (standard of care for providing transportation to school is the same as that for common carriers). Second, under specified circumstances, school districts are authorized to transport over private roads and are held immune from claims directly related to the construction of such roads. Conn. Gen. Stat. § 10-220c.

In recent years, the General Assembly has made a number of statutory changes to regulate further the transportation of school children. There have

long been specific requirements concerning school buses and their drivers. *See*, *e.g.*, Conn. Gen. Stat. §§ 14-44, 14-275. The legislature has debated the advisability of requiring seat belts on school buses from time to time, but they are not required. However, in 2010, the General Assembly charged the Department of Motors Vehicles with the responsibility for establishing a program from July 1, 2011 through June 30, 2017 whereby private contractors that purchase between one and fifty school buses with three-point seatbelts may receive a rebate of fifty percent of the sales tax on such buses. Public Act 10-83.

Since 1990, the statutory regulation of transportation of school children has included "student transportation vehicles," which, effective July 1, 2010, are defined as "any motor vehicle other than a registered school bus used by a carrier for the transportation of students to and from school, school programs or school sponsored events." Conn. Gen. Stat. § 14-212. There are now detailed requirements concerning the employment and licensure of drivers of both school buses and student transportation vehicles, including background screening and drug testing. Conn. Gen. Stat. §§ 14-44, 14-276, 14-276a. In addition, school bus operators are now prohibited from running the engine of a stopped school bus for more than three consecutive minutes except when it is necessary in specified circumstances, including traffic conditions, keeping the bus warm for students, and discharging passengers. Conn. Gen. Stat. § 14-277.

The broad definition of "student transportation vehicle" raised many questions concerning incidental transportation of students, for example, parent car-pooling for a field trip. In 2007, the Department of Motor Vehicles addressed these concerns in a declaratory ruling. Department of Motor Vehicles, Decision on Petition for Declaratory Ruling , Administrative Hearing, August 15, 2007 (November 16, 2007). There, DMV ruled that the special licensure requirements applicable to drivers of student activity vehicles do not apply to parents or volunteers who transport students in connection with a school-sponsored event or activity, or to a school teacher, coach or other employee transporting students when such transportation is on an incidental, unplanned or emergency basis.